

REMARKS

Claims 1-7, 20, and 22-32 are now pending in the application. Claims 1 and 20 have been amended simply to correct a grammatical oversight in the preamble. Claims 20 and 27 have been amended to insert a comma. The basis for the foregoing amendments may be found throughout the written description, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-7, 20 and 22-31 stand rejected under 35 U.S.C. § 103(a) as being anticipated by U.S. Publication 2002/0019649 (Sikora) and further in view of U.S. Pat. No. 5,702,462 (Oberlander) and U.S. Publication 2003/0130694 (Bojarski). This rejection is respectfully traversed.

At the outset, Applicants note that the instant disclosure provides and claims a method of repairing a tear in body tissue wherein a retaining head locates against an outer surface of the tissue and an anchor locates within the body tissue at a location intermediate a portion of the tear and the outer surface of the tissue. FIG. 7 of the instant disclosure is copied immediately below for reference.

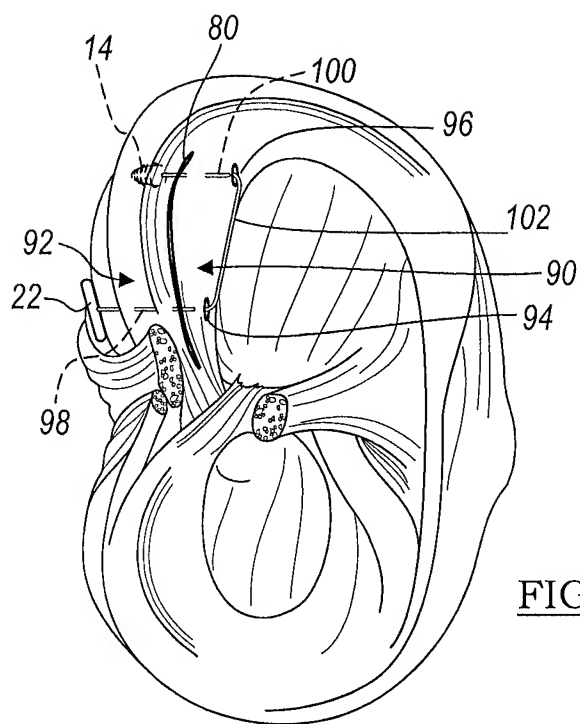


FIGURE 7

In the most recent Office Action, it is acknowledged that Sikora does not teach that the anchor is placed between the tear and the outer portion of the body tissue (see item 3). FIG. 1 of Sikora is copied immediately below for reference.

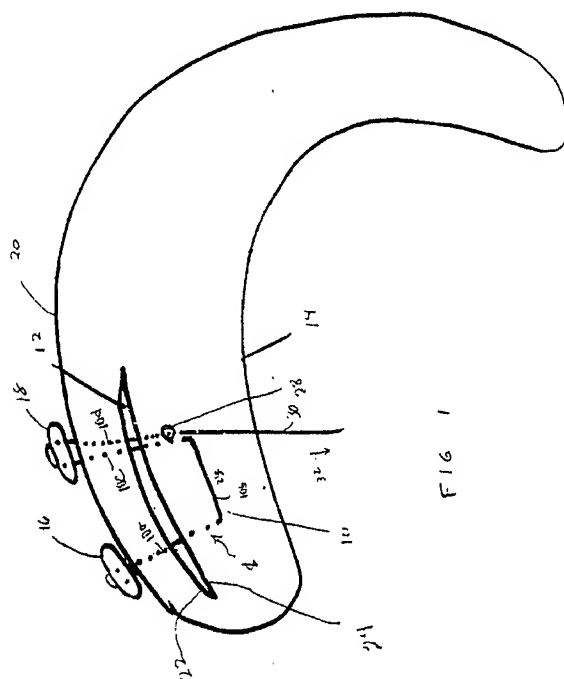


FIG 1

The most recent Office Action cites Oberlander as curing this deficiency. Oberlander teaches a method of locating two anchors within the tissue (i.e. not against an outer surface like Sikora). FIG. 6 of Oberlander is copied immediately below for reference.

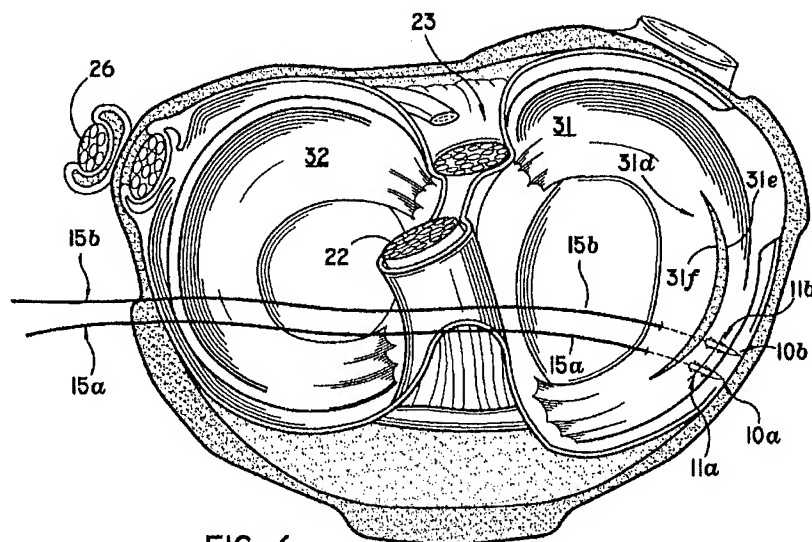


FIG. 6

Oberlander specifically teaches away from locating any anchors on an outer surface of the tissue. Oberlander identifies deficiencies in the prior art that require an entrance puncture and an exit puncture. Specifically, Oberlander states, "all of these techniques involve the penetration of the meniscus on two sides, thereby creating an entrance puncture and an exit puncture, the exit puncture typically being located at the outer rim of the meniscus". See Col. 1, Lines 65-67 through Col. 2, Line 1. By requiring both anchors to be embedded within the tissue (see FIG. 6 above), Oberlander overcomes the deficiencies identified in the prior art. Applicants submit that it is established that where references, instead of suggesting the invention, seek to warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837

F.2d 1071, 1074 (Fed. Cir. 1988) (citing W.L. Gore & Assocs. V. Garlock, Inc., 721 F.2d 1540, 1550 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

Moreover, Applicants submit that the Office Action cannot simply pick and choose *some* features of Oberlander (i.e. one of the anchors that is embedded within the tissue) without considering the reference as a whole (i.e. specifically directed toward having both anchors embedded within the tissue so that no external anchors are present). The Federal Circuit has ruled "[Respondent cannot] pick and choose among the individual elements of assorted prior art references to recreate the claimed invention". Smithkline Diagnostics v. Helena Lab. Corp., 859 F.2d 878, 887 (Fed. Cir. 1988).

The Office Action also refers to FIG. 83 of Bojarski. In FIG. 83, copied immediately below, two anchors are located against the outside surface of the tissue.

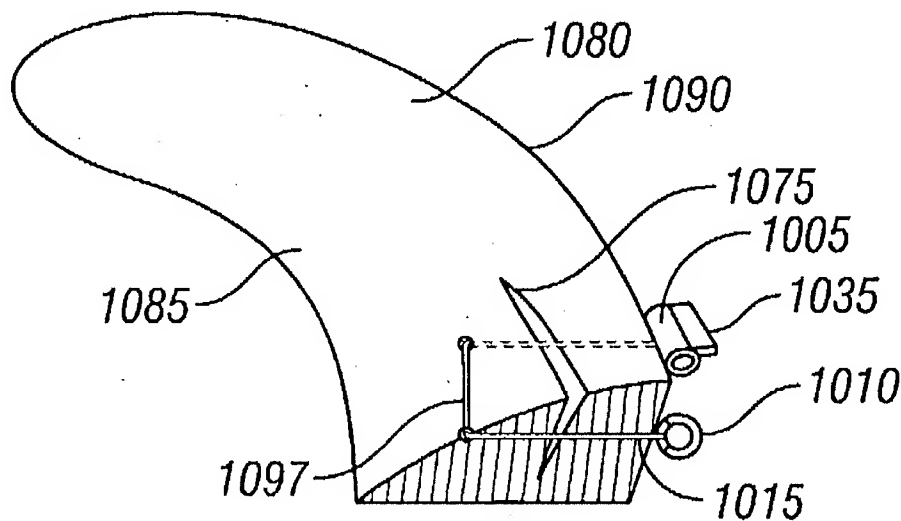


FIG. 83

The Office Action fails to provide a reference, or a proper combination of references, that teach a method of repairing a tear in tissue wherein distal ends of a

flexible member are coupled to anchors, a first anchor (retaining member) is located against an outer surface of the tissue and a second anchor is located within the body tissue at a location intermediate a portion of the tear and the outer surface of the tissue. Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

Claim 32 stands rejected as being unpatentable over Sikora and Oberlander and Bojarski, as applied to Claim 30, in further view of U.S. Pat. No. 4,669,473 (Richards). This rejection is respectfully traversed. Applicants note that claim 32 ultimately depends from claim 27. For at least the reasons set forth above, Applicants submit that claim 27 and all dependent claims therefrom are in condition for allowance.

Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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